

DEPARTMENT OF BOATING AND WATERWAYS

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Information Letter

DATE: *February, 2006*

TO: *Licensed Yacht and Ship Brokers*

FROM: *Gina Ebling, Department of Boating and Waterways*

SUBJECTS: *1) The PLS issue revisited 2) A warning to marina operators who are also yacht brokers 3) DBW Broker/Salesperson Examination Revision Project 4) Revising records to reflect cancelled or outdated exclusive listings 5) Corporate renewal licenses*

LICENSING ISSUES: *Internet Navigation, Renewal Fees, Address and DBA Changes, Sales Application Requests, Licensing Phone Calls*

As we greet 2006, I'd like to take a moment to reflect on some accomplishments of the past year. CYBA has enhanced industry standards by developing standardized forms and initiating the Professional Yacht Broker Certification Program and the Professional Yacht Salesperson Certification Program. The Department has added new staff and increased inspections. We have also made a concerted effort to perform field "visits" to brokers throughout the State; answering questions and providing guidance regarding Departmental laws and regulations.

The Department looks forward to continuing our mission of providing consumer protection while assisting industry in maintaining a fair and competitive marketplace. The following issues are currently under review:

1. Private Label Search Issue - Revisited

The Department has received information that several brokerages may have violated specific sections of the Harbors and Navigations Code relating to the Private Label Search offered by Yachtworld and other on-line systems. As you are probably aware, this particular issue has been addressed by the Department, by the California Yacht Brokers Association (CYBA) and by Yachtworld (YW) in cases dating back to 2003.

In recognizing that there may be a number of California brokers subscribing to the Private Label Search (PLS) system, the Department worked closely with the Office of the Attorney General and YW in determining whether a California broker who subscribes to the PLS system may be subject to disciplinary action under the Harbors and Navigation Code. Based upon our current investigation, the Department has determined that the online PLS advertising service currently offered to California brokers may subject those licensed brokers to discipline for violations of the Harbors and Navigation Code.

Online services for the sale of vessels is a continually evolving technology, therefore the Department considers the control of such systems an ongoing issue. This letter will attempt to recognize several potential violations, as follows:

1. Yacht brokers who are PLS subscribers who do not obtain the required written authorization from the principal to sell or list the vessel for sale may be subject to violations of Section 716(a) of the Harbors and Navigation Code.

Under California law, a yacht and ship broker is required to obtain a vessel owner's written consent before engaging in "any transaction for which a license is required" which includes the sale and listing of a vessel for sale. Section 716(a) of the Harbors and Navigation Code states:

"No broker shall engage in any transaction for which a license is required under this article without first obtaining a signed written authorization to do so from the broker's principal. An authorization to sell shall contain a description of the vessel, including the undocumented vessel's registration number or the name, official number, and home port if the vessel is documented with a federal agency. The written authorization shall also state the type of listing, the gross listing price, the agreed upon commission or other compensation of the broker, and any repairs authorized to be made."

The PLS search engine is provided by an on-line system and can be "built into" any brokerage web site. This search engine can also be deleted from a website without compromising any other aspect of the site. When this search engine is "built into" a website, it will locate any vessel designated as "available for co-brokerage" meeting specific criteria, then transmit the information under the letterhead of the broker whose site is being visited, **not** the broker who is listing the boat.

The resulting listing on the PLS online system identifies only the third party broker/subscriber as the contact for the vessel, notwithstanding the absence of any written authorization from the principal, or from the listing broker, who should have obtained written authorization to share the listing as required under Title 14, California Code of Regulations, section 7605, which states:

"If a broker intends to or does share a listing with other brokers, he must obtain authorization in writing from his principal to do so in his authorization to sell (listing agreement)."

Any third-party broker who subscribes to an on-line listing service and maintains the PLS search engine is, in effect, listing a principal's boat without the principal's or listing broker's written authorization.

The Department has taken steps to eliminate this problem in California by requesting that YW remove this particular search engine from the websites of all California brokers as soon as possible. The Department has also published an announcement in the California Yacht Brokers Association newsletter reiterating our position of June, 2003. The Department believes that support from the CYBA will also assist in correcting the effects of this practice.

As you know, the Department has no jurisdiction over YW or any other on-line listing service. YW has been extremely cooperative in offering advice and assistance to the Department regarding the PLS issue. The Department is currently researching a process which may result in California brokers being provided the advantages of the PLS search while maintaining compliance with California law.

The Department will continue to investigate each complaint concerning the PLS issue and take action as warranted. If your website currently displays the PLS search engine, please remove it immediately. Any questions regarding the design or removal of the search engine can be directed to Jessica Muffett at Yachtworld. Jessica can be contacted at (877) 336-9527.

2. The Responsibility of Marina Operators Who Are Also Yacht Brokers

The Department has recently received information regarding certain practices of yacht brokers who are also marina owners/operators. Reports allege that these brokers are using their position as marina operators to influence prospective buyers to enter into a contract with them. Individuals who notified the Department indicated they were intimidated by brokers who are also marina operators/owners who informed them a slip would not be available unless they purchased a vessel from their brokerage.

If you own or operate a marina and are also a yacht broker, you are reminded that such tactics could be considered coercion and unfair business practices in violation of Harbors and Navigations Code Section 732(g), which prohibits a licensee from using:

coercive or oppressive methods for the purpose of obtaining business or of procuring a listing or participation in a transaction

In addition, pursuant to CCR Section 7615, it shall constitute coercive and oppressive methods within the meaning of Section 732, subsection (g) of the Harbors and Navigation Code, if a licensee who is also the owner, operator, or otherwise in charge of a landing, pier or mooring place:

(a) Exacts or demands all or part of a broker's fee or commission from the sale by the owner or any other licensed broker or salesman of any yacht or boat moored at said landing pier or mooring place solely because said yacht or boat was or is moored at such pier or landing place;

(b) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by an owner of a boat or yacht for the reason that said boat or yacht is listed for sale with another licensee;

(c) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by the purchaser of a boat or yacht moored at such landing pier or mooring place because another licensee had made the sale of such boat or yacht.

3. Broker/Salesperson Examination Revision Project

The Department of Boating and Waterways (DBW) has contracted with Cooperative Personnel Services (CPS) to revise existing broker and salesperson examinations. CPS is an organization dedicated to assisting public agencies with examination development and implementation.

The Department is looking forward to working with the Yacht industry to update and improve broker and salesperson examinations, and has recruited only qualified subject matter experts to assist in the development and review of examination questions. Volunteers were selected from all areas of California to serve on this panel which includes several salespeople who will assist with the salesperson exam revision process.

The examination revision project should begin in early 2006 with an approximate duration of one year. Should you have further questions or concerns regarding participation in this project or would like to volunteer as a subject matter expert, please contact Gina Ebling at (916) 263-8195.

The Department thanks all the dedicated subject matter experts in advance for their participation and commitment to this important project!

4) Failure to Update Listing Information When Listing Status is Changed from 'Exclusive' to 'Open'

It appears some brokers are failing to revise listing agreements when clients decide to switch from an "exclusive" listing to an "open" listing. This is causing confusion for sellers and buyers, as well as for other brokers. Remember to adhere to the agreed upon expiration date, terms and conditions in the original listing agreement until sellers authorize any and all revisions.

5) Corporate License Renewals

The Department has received information from the Secretary of State's Office indicating that some corporate licenses are no longer in good standing. The Department has begun reviewing the status of the corporation with the Secretary of State before renewing a corporate license. If a corporate license is found to be "suspended" or "forfeited" by the Secretary of State, the DBW renewal will not be processed unless or until an "active" status is reinstated by the Secretary of State. If your company is designated as a corporation, please maintain that status with the Secretary of State.

LICENSING ISSUES

- **Internet Navigation:**

Broker/Salesperson renewal forms and enforcement complaint forms can be obtained by visiting our website at www.dbw.ca.gov ; **click on Boater Information and then Yacht and Ship Broker Licensing**, this site also offers information on fees, study material and exam dates.

- **Renewal Fees:**

Renewal fees must be received on or before the date of expiration. If not received by the license expiration date, late fees will apply, as follows:

Broker renewal	\$75
Broker late renewal (reinstatement)	\$112.50
Salesperson renewal	\$50
Salesperson late renewal	\$75

- **Address and *Doing Business As* (dba) Changes:**

Address and DBA changes must be submitted in writing to the department along with your original broker's license promptly. Renewal reminders are sent out approximately one month before the license expiration date. These reminders are sent by the Department as a **courtesy**. It is the responsibility of each broker and salesperson to update addresses and ensure renewal fees are submitted to the Department before the license expiration date.

- **Salesperson Application Requests:**

Only brokers may request salesperson applications from the Department, either by telephone, fax or e-mail. Sales applicants will receive all Department information by way of the broker of record.

- **Phone Calls to the Licensing Unit:**

Please leave only one message with the licensing unit, allowing time to process your request. Staff will research your request and respond within 24 hours.